IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE THIRD DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI

and
THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION No. 28498 of 1997

Between:

A.P.Forest Development Corporation Ltd.,

Regd. Office : 3rd Floor, UNI Building, A.C.Guards, Hyderabad.

…Petitioner.

AND

1. The Asst.Commissioner of Income Tax, Circle 5 (1),

Ayakar Bhavan, Basheerbagh, Hyderabad.

2. The Commissioner of Income Tax, AP-I,

Ayakar Bhavan, Basheerbagh, Hyderabad.

.....Respondents

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to pleased to issue a writ of certiorari or any other writ, order or direction quashing the order of the respondent
No. 2 passed on the petitioner in file No.HQS./1-40(37)/96-97,
dated 28-5-97 to the extent to which the order requires the tax to be collected on bamboo, eucalyptus and firewood u/s 206-C of the I.T Act.

Counsel for the Petitioner : MR.Y.RATNAKAR

Counsel for the Respondents : MR.S.R.ASHOK, SC

The Court made the following :

THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE S.ANANDA REDDY

WRIT PETITION No.28498 OF 1997

ORDER : (Per Hon'ble Sri Justice S.Ananda Reddy)

This writ petition is filed assailing the order dated 28-5-1997 of the second respondent, Commissioner of Income Tax passed under Section 264 of the Income Tax Act, 1961 revising the order of the Assessing Officer granting partial relief to the petitioner assessee.

The petitioner is Andhra Pradesh Forest Development Corporation Limited. Against

the said Corporation, first respondent herein initiated proceedings under Section 206-C Income Tax Act, 1961 (for short 'the Act') and passed order for the years 1988-89 to 1993-94 on the ground that the petitioner Corporation failed to collect tax from its buyers in respect of Bamboo, Cashew, Eucalyptus, Pepper, Firewood etc. According to the Assessing Officer-first respondent herein, the petitioner Corporation was obligated to collect tax from the buyers of timber and other forest produce at the rates specified under

Section 206-C of the Act. Therefore, first respondent initiated proceedings proposing to treat the petitioner Corporation as an assessee deemed to be in default and to collect the tax which it failed to collect from the buyers of timber and other forest produce. The petitioner Corporation appeared before the Assessing Officer and claimed that the produce it sold to various buyers was agricultural produce, as the petitioner Corporation had developed the land and cultivated various tree growth as well as horticultural products and the sale of such items would not attract the provisions of Section 206-C of the Act. The petitioner also produced some non-deduction certificates issued by various Assessing Officers, claiming exemption from the tax collection at source. The first respondent, however, rejected the claim of the petitioner Corporation that the timber and other products sold by it are agricultural products and even with reference to the

non-deduction certificates, the Assessing Officer gave part relief and computed the liability including interest at about

Rs.12-00 Crores. Aggrieved by that, the petitioner Corporation filed a revision before second respondent. Second respondent, in the first round of revision, remanded the matter to the Assessing Officer and after remand, the Assessing Officer again passed an order dated 7-1-1997 computing the tax payable by the petitioner Corporation at Rs.3,94,68,526/-. Aggrieved by that the petitioner Corporation again carried the matter in revision before second respondent and reiterated the contentions that the petitioner Corporation obtained the produce by using human efforts, fertilizers, pesticides etc., and the produce thus derived is as a result of agriculture carried on by the Corporation, and therefore, it is an agricultural produce, which would not attract the provisions of Section 206-C of the Act. The

Commissioner of Income Tax, second respondent herein, considered the contentions of the petitioner Corporation with reference to the provisions of the Andhra Pradesh Forest Act, 1967 (for brevity 'the Forest Act') especially with reference to the definition of 'forest produce' contained in Section 2(g) of the Forest Act and concluded that the petitioner Corporation was under obligation to collect tax (a) on timber (including Malaysian sal wood and eucalyptus poles);
(b) under Section 206-C in respect of sale of bamboo, as bamboo is forest produce; and (c) under Section 206-C on sale of firewood, which is nothing but timber of a specified dimension under the rules. The Commissioner, however, accepted the claim of the petitioner Corporation with reference to coffee and cashew holding that the same does not fall within the term 'forest produce' as defined in Section 2 of the Forest Act. Therefore, finally the first respondent was directed to compute the collectable tax under Section 206-C of the Act from timber, bamboo and firewood and ordered to revise the original order passed by him. While doing so, the Assessing Officer was also directed to consider the
non-deduction certificates issued by the officer concerned and produce before the first respondent. Aggrieved by that, the petitioner Corporation has come up with the present writ petition.

Learned counsel for the petitioner Corporation contended that the Corporation was formed with an intention to develop the land by cultivating various types of timber or other produce, like coffee, cashew, eucalyptus, pepper, bamboo etc. For that purpose, the Government has allotted certain land, which was re-claimed by the petitioner Corporation and through the process of development of the said land, the petitioner Corporation has cultivated and grown various types of trees. It is also stated that the petitioner Corporation has effected the sales of eucalyptus poles to Singareni Collieries Limited, a Public Sector Undertaking. Similarly, eucalyptus, pulpwood, bamboo industrial cuts etc., were sold to companies like A.P. Paper Mills Limited, Badrachalam Paper Boards Limited, Sirpur Paper Mills Limited, A.P. Rayons Limited etc.; cashewnuts, pepper etc., were sold to TTD and other individuals. According to the petitioner Corporation all the produce that was sold by

it to various buyers is an agricultural produce. In fact, the petitioner Corporation filed an order of assessment for the year 1986-87 where the Assessing Officer passed an assessment considering the contentions elaborately with reference to the sale of various items including the items, which are considered by the respondent now and the sale produce of all those items was claimed by the petitioner Corporation as agricultural income and the Assessing Officer accepted the said claim and exempted the entire income of the petitioner Corporation under Section 10(1) of the Act. The said order has become final. It is also claimed that even for the subsequent years including the years under consideration, the petitioner Corporation has filed its returns claiming similar benefit of exemption of agricultural income and the department has accepted the returns. Therefore, the learned counsel contended that there is absolutely no justification in passing an order under Section 206-C of the Act, that too after a long lapse of time with reference to the periods for which the alleged tax collection was not done by the petitioner Corporation. The learned counsel also, in fact, contended that even in the absence of any specific period of limitation prescribed under the relevant provisions of the Act, the orders have to be passed within the reasonable time. As the impugned order was passed long after the relevant periods, the same is liable to be quashed on the ground of limitation. The learned counsel further contended that under Section 206-C of the Act, there is no specific provision declaring the petitioner Corporation as an assessee deemed to be in default for its failure to collect and remit the tax. No doubt, the provisions made provide, with reference to the sale of specified items of produce, for collection of tax by the seller from the buyers, but no authority is specified empowering him to pass orders in case of default. In the absence of any such specific provision, treating the petitioner Corporation as an assessee deemed to be in default and in the absence of any specific provision authorizing any authority or officer to pass such an order, the impugned order is liable to be quashed. The learned also contended that after the revisional order, the items that are ordered to be considered for collection of tax is bamboo, eucalyptus and pepper. As these items are the products as a result of the agricultural operations carried on by the petitioner Corporation, they cannot be treated either as timber extracted from forest or as a forest produce, therefore, sought

for setting aside the impugned order of second respondent. The learned counsel also relied upon the judgment of the Supreme Court in **Commissioner of Income Tax v. Raja Benoy Kumar Sahas Roy**.

Learned senior standing counsel for the Department, however, contended that Section 206-C of the Act was introduced in the Statute in order to remedy the tax evasion by those who are purchasing and dealing with the items mentioned in Section 206-C of the Act. Therefore, as a measure, this provision has been inserted imposing obligation on the seller to collect tax from the buyers at the time of sale at particular rates specified under the said provision and to remit the same to the Central Government. According to the learned counsel, at the stage of collection of tax, it is not open to the collecting agency to go into the issue whether the items that are being sold by it are agricultural produce or a

non-agricultural produce as is referred to in the said Section. If ultimately the buyers are not liable to pay any tax they are at liberty to file their returns and claim for refund basing on the certificates issued by the petitioner Corporation showing the collection of tax at the time of purchase. The learned standing counsel also contended that admittedly what was sold by the petitioner Corporation was timber, such as bamboo, eucalyptus etc., therefore, the petitioner Corporation was under obligation to collect tax. Similarly, with reference to the other items, it is contended that they have to be treated as forest produce, and therefore, the petitioner Corporation is liable to collect the tax at the time of sale. The learned standing counsel relied upon

Rule 37 (E) and (F) of the Income Tax Rules and contended that even in the absence of a specific provision treating the petitioner Corporation as an assessee deemed to be in default as well as in the absence of any specific provision authorizing an officer to pass an order so as to collect the amount of tax collectable by the petitioner Corporation at the time of sale of its produce, the provisions have to be liberally construed as they are only machinery provisions. In support of his contention, the learned standing counsel relied upon the decision of the Apex Court in **Fertilizer Corporation of India Limited v. State of Bihar** and contended that when once there is an obligation on the part of the petitioner Corporation to collect

the tax at the time of sale of its produce, it has to collect and paid over to the Central Government. As the petitioner Corporation failed to do so, the authorities under the Act have initiated proceedings and passed appropriate order. In fact, it is contended by the learned standing counsel that in the absence of any specific provision to pass an order, the Assessing Officer can even issue a notice directing the petitioner Corporation to pay the amount which it ought to have been collected from its buyers. When it failed to collect and pay to the Central Government, in order to give an opportunity to the assessee, the Assessing Officer has issued notice and passed a detailed reasoning order considering the objections of the petitioner Corporation. Therefore, there is absolutely no material warranting interference. The learned standing counsel also contended that when a revision is filed against the order of first respondent, the revisional authority-second respondent herein on merits granted even partial relief. Therefore, there is no merit warranting interference.

From the above rival contentions, the issue to be considered is whether the items of sale effected by the petitioner Corporation would attract the provisions of Section 206-C of the Act and failing to comply the said provision, whether the Department is entitled to proceed and recover the same from the petitioner Corporation? In order to have a clear idea of the provision, it would be appropriate to extract the relevant provision of Section 206-C of the Act, which reads as under.

Profits and gains from the business of trading in alcoholic liquor, forest produce, scrap, etc.

206C. (1) Every person, being a seller referred to in section 44AC, shall, at the time of debiting of the amount payable by the buyer referred to in that section to the account of the buyer or at the time of receipt of such amount from the said buyer in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, collect from the buyer of any goods of the nature specified in column (2) of the Table below, a sum equal to the percentage, specified in the corresponding entry in column (3) of the said Table, of such amount as income tax on income comprised therein.

TABLE

S.No. Nature of Goods Percentage

(1) (2) (3)

(i) Alcoholic liquor for human consumption Fifteen percent

(other than Indian-made foreign liquor)

(ii) Timber obtained under a forest lease Fifteen percent

(iii) Timber obtained by any mode other (Five) percent

than under a forest lease

(iv) Any other forest produce not being timber Fifteen percent

Provided that where the Assessing Officer, on an application made by the buyer, gives a certificate in the prescribed form that to the best of his belief any of the goods referred to in the aforesaid Table are to be utilized for the purposes of manufacturing, processing or producing articles or things and not for trading purposes, the provisions of this sub-section shall not apply so long as the certificate is in force.

(2) The power to recover tax by collection under sub-section (1) shall be without prejudice to any other mode of recovery.

(3) Any person collecting any amount under sub-section (1) shall pay within seven days the amount so collected to the credit of the Central Government or as the Board directs.

(4) Any amount collected in accordance with the provisions of this section and paid under sub-section (3) shall be deemed as payment of tax on behalf of the person from whom the amount has been collected and credit shall be given to him for the amount so collected on the production of the certificate furnished under sub-section (5) in the assessment made under this Act for the assessment year for which such income is assessable.

(5) Every person collecting tax in accordance with the provisions of this section shall within ten days from the date of debit or receipt of the amount furnish to the buyer to whose account such amount is debited or from whom such payment is received, a certificate to the effect that tax has been collected, and specifying the sum so collected, the rate at which the tax has been collected and such other particulars as may be prescribed.

[*(5A) Every person collecting tax in accordance with the provisions of this section shall prepare half yearly returns for the period ending on 30th September and 31st March in each financial year, and deliver or cause to be delivered to the prescribed income tax authority such returns in such form and verified in such manner and setting forth such particulars and within such time as may be prescribed.*]

(6) Any person responsible for collecting the tax who fails to collect the tax in accordance with the provisions of this section, shall, notwithstanding such failure, be liable to pay the tax to the credit of the Central Government in accordance with the provisions of sub-section (3).

(7) Without prejudice to the provisions of sub-section (6), if the seller does not collect the tax or after collecting the tax fails to pay it as required under this section, he shall be liable to pay simple interest at the rate of two per cent per month or part thereof on the amount of such tax from the date on which such tax was collectable to the date on which the tax was actually paid.

(8) Where the tax has not been paid as aforesaid, after it is collected, the amount of the tax together with the amount of simple interest thereon referred to in
sub-section (7) shall be a charge upon all the assets of the seller.]

A perusal the above shows that this provision was inserted by the Finance Act, 1988 along with Section 44AC, which was intended for levy and collection of presumptive tax in the case of trading in certain goods to remove hardship and to remove the lacuna. The trades mentioned therein are Alcoholic liquor for human consumption; timber obtained under a forest lease; timber obtained by any mode other than under a forest lease; and any other forest produce not being timber, at different rates. The object of introduction of the new provisions for working out the profits on presumptive basis is to get over the problems being faced in assessing the income of and recovering the taxes in the cases of persons trading in the above items. A large number of such persons either do not maintain any books of accounts or the books maintained are irregular and incomplete. Locating such persons after the contract or agreement became impossible in many cases. Further, in such cases, even if the assessment was completed, the Income Tax Department found it extremely difficult to collect the tax from them. Thus, the assessment of income and recovery of taxes from such businessmen posed serious problems. Therefore, these two provisions were brought on the statute not only to estimate the profits on presumptive basis, but also to collect the tax on such transactions at specified rates mentioned in Section 206-C of the Act.

The Department has applied the above provisions to the petitioner Corporation perhaps on the assumption that the items that were sold by the petitioner Corporation would fall under the items specified under Section 206-C of the Act. Though the Department claimed that the items dealt with by the petitioner Corporation would fall under the items specified in the relevant provision, but that claim is disputed by the assessee. According to the petitioner Corporation, it did not deal with any forest produce like timber or any other forest produce, therefore, the provisions of Section 206-C of the Act has no application. But this claim was rejected by both the authorities on the ground that the very name of the petitioner is Forest Development Corporation which would imply that it was dealing with the forest and its produce must be treated as forest produce. Further, the contention of the learned standing counsel for the Department is that it is not necessary to go into the issue whether it is a forest produce or non-forest produce, the sale by the petitioner of the items specified would attract the provisions of Section 206-C of the Act, and therefore, the petitioner Corporation is under obligation to collect the tax while effecting the sales of its produce. We are unable to agree with the contention of the learned standing counsel for the Department that it is not necessary to go into the nature of the products that were sold by the petitioner Corporation in order to attract the provisions of Section 206-C of the Act. The provisions of Section 206-C of the Act would apply only with reference to the timber obtained under a forest lease; or timber obtained by any mode other than under a forest lease; and any other forest produce not being timber. From the above provision, it is clear that the Legislature intend to apply this provision in respect of timber and other produce obtained from the forest and not intended to apply to any produce. Therefore, in order to attract the provisions of Section 206-C of the Act, one has to examine whether the items sold by the petitioner Corporation is a forest produce or not? In fact, the contention advanced by the learned standing counsel for the Department would not reflect from the impugned order. On the other hand, the stand of second respondent is that the provisions of Section 206-C of the Act is applicable only with reference to the forest produce. But according to him, the items of produce sold by the petitioner

Corporation would fall under items (ii) and (iii) specified in the Table in Section 206-C of the Act. Therefore, there is absolutely no merit in the contention of the learned standing counsel that even if the produce is not a forest produce, still the petitioner Corporation is under obligation to collect the tax at the time of effecting the sale.

Coming to the nature of the produce, a perusal of the impugned order shows that the Commissioner was more influenced by the terms contained in the Andhra Pradesh Forest Act rather than confining himself to the provisions of the Income Tax Act and to the facts of the case. The Commissioner accepted the claim that coffee, cashew etc., grown on the land assigned to the petitioner Corporation does not fall under the term 'forest produce'. But with reference to eucalyptus, bamboo and firewood, the Commissioner felt that it would fall under the term 'forest produce'. There is no finding either by the Assessing Officer or by the revisional authority whether the produce sold by the petitioner Corporation was actually grown and cultivated by the petitioner Corporation or not? In order to decide the issue whether the items that are directed to be treated as forest produce, one has to examine and consider the claim of the petitioner Corporation and must arrive at a finding whether these products were, in fact, grown by carrying on the operations on the soil and obtained as a result of such operations. In fact, the learned counsel relied upon the decision of the Apex Court in **Commissioner of Income Tax v. Raja Benoy Kumar Sahas Roy** (supra-1) where the Apex Court had an occasion to consider the term 'Agriculture' in order to decide whether particular receipts are liable to tax or not? In that case the respondent owns an area of Acs.6,000-00 of forest land assessed to land revenue and grown with *sal* and *piyasal* trees. The forest was originally of spontaneous growth, "not grown by the aid of human skill and labour" and it has been in existence for about 150 years. A considerable income is derived by the assessee from sales of trees from this forest. Though, originally for some assessment years the income was assessed as forest income, thereafter it was not declared between 1923-24 to 1944-45. Therefore, the assessment for the assessment year 1944-45 was reopened proposing to include the receipts on the sale of forest produce. This was contested by the assessee. The Apex Court after considering elaborately held as under.

“Agriculture” in its primary sense denotes the cultivation of the field and is restricted to cultivation of the land in the strict sense of the term, meaning thereby tilling of the land, sowing of the seeds, planting and similar operations on the land. These are basic operations and require the expenditure of human skill and labour upon the land itself.

Those operations which the agriculturist has to resort to and which are absolutely necessary for the purpose of effectively raising produce from the land, operations which are to be performed after the produce sprouts from the land, e.g., weeding, digging the soil around the growth, removal of undesirable undergrowth, and all operations which foster the growth and preservation of the same not only from insects and pests but also from depredation from outside, tending, pruning, cutting, harvesting and rendering the produce fit for the market, would all be agricultural operations when taken in conjunction with the basic operations. The human labour and skill spent in the performance of these subsequent operations cannot be said to have been spent on the land itself.

The mere performance of these subsequent operations on the products of the land, where such products have not been raised on the land by the performance of the basic operations, would not be enough to characterize them as agricultural operations; in order to invest them with the character of agricultural operations these subsequent operations must necessarily be in conjunction with and in continuation of the basic operations which are the effective cause of the products being raised from the land. The subsequent operations divorced from the basic operations cannot constitute by themselves agricultural operations.

Only if this integrated activity which constitutes agriculture is undertaken and performed in regard to any land be said to have been used for “agricultural purposes” and the income derived therefrom be said to be “agricultural income” derived from the land by agriculture, under section 2(l) of the Indian Income-tax Act, 1922.

Agriculture comprises within its scope the basic as well as the subsequent operations described above regardless of the nature of the products raised on the land. These products may be grain or vegetable or fruits which are necessary for the sustenance of human beings, including plantations and groves, or grass or pasture for the consumption of beasts or articles of luxury, such as betel, coffee, tea, spices, tobacco, or commercial crops like cotton, flax, jute, hemp, indigo. All these are products raised from the land but the term agriculture cannot be confined merely to the production of grain and food products for human beings and beasts; it must be understood as comprising all the products of the land which have some utility either for consumption or for trade and commerce and would also include forest products such as timber and sal and piyasal trees, casuarinas plantations, tendu leave and horra nuts.

There is no warrant at all for extending the term "agriculture" to all activities which have some relation to the land or are in any way connected with the land, for the term agriculture cannot be dissociated from the primary significance thereof, which is that of cultivation of the land. The extension of the term "agriculture" to denote such activities as breeding and rearing livestock, dairy farming, butter and cheese-making, and poultry farming, is an unwarranted distortion of the term.

From the above, it is clear that a distinction has been drawn between the 'agricultural operations and agricultural produce' with that of 'forest produce'. Basically, forest produce is the produce grown spontaneously, may be at the subsequent stages some human effort and skill may be applied in order to protect and extract the resultant product, which could be considered as a forest produce. As is evident from the relevant provisions, the tax collection at the time of sale is intended only to be applied in respect of the forest produce and not with reference to the agricultural produce. Therefore, in order to hold that the assessee is liable to collect the tax at source, the authorities have to give a finding that it is a forest produce. The finding that was arrived at by the Commissioner, second respondent herein, is not with reference to the basic facts but only based on the provisions of the A.P. Forest Act. In fact, it was the contention of the assessee that for the assessment year 1986-87 the sale proceeds were treated as receipts from the sale of agricultural produce and exempted from assessability to tax. In fact, it is claimed that even for the subsequent years including the assessment years in question, the petitioner's returns were accepted treating its income as agricultural income. If such is the factual position, there is absolutely no justification for the authorities to proceed against the petitioner Corporation as an assessee deemed to be in default.

Though it was contended that there is no specific provision under which any authority is specified to pass an order or treating the petitioner Corporation as an

assessee deemed to be in default for non-collection and non-remittance of the amount specified to be collected in terms of Section 206-C of the Act, but, however, a perusal of the relevant provision clearly shows that the persons specified in the said provision are liable to collect tax at the time of effecting the sale of the items specified in the Table provided in the said provision and the said amount has to be remitted to the Central Government within seven days of its collection.

Sub-section (6) of section 206-C of the Act also provides that any person responsible for collecting the tax, who fails to collect the same, shall, notwithstanding such failure, be liable to pay the tax to the credit of the Central Government. A penal provision is also incorporated imposing the interest at the rate of 2% for failure to collect or failure to remit the amount collected. Further, the amount not paid shall have a charge on the assets of the seller. In any case, when there is an obligation on the part of the seller as contemplated under Section 206-C of the Act in respect of the items specified therein, the seller has to collect the tax and remit to the Central Government. Therefore, without going into the merits of the contentions as to the slight lacuna in the provisions, such as absence of specific authority empowered to pass an order or in the absence of a consequential action against the seller who fails to collect the tax, in the light of the judgment of the Apex Court in the case of **Fertilizer Corporation of India Limited v. State of Bihar** (supra-2) wherein it was held while interpreting the Taxation Statutes, machinery provisions are to be interpreted liberally and generously so long as principal object of provision is not frustrated. If so interpreted, the first respondent being the Assessing Authority cannot be said to be without jurisdiction to pass an order under Section 206-C of the Act. Even with reference to the limitation, as the notice was issued in December, 1994 and the order was passed in 1995, the same cannot be said to be beyond the period of limitation.

Under the above circumstances, the impugned order of the second respondent is set aside and the matter is restored to the first respondent to consider the claim of the petitioner Corporation and to give a finding as to the nature of the production of the items, which are directed to be treated as forest produce by the

Commissioner of Income Tax, second respondent herein and after ascertaining the nature of the produce, it is open to the first respondent to pass appropriate order. While doing so, the first respondent is also directed to consider the assessment order already passed against the petitioner Corporation for the relevant assessment years in question. It is needless to clarify, if the income of the petitioner Corporation is accepted as agricultural income and exempted from tax, the question of applying the provision of Section 206-C of the Act, would not arise.

The writ petition is accordingly allowed as indicated above. No order as to costs.

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(BILAL NAZKI, J)

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Date: -10-2004. (S.ANANDA REDDY, J)

Msr.

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Wednesday, the Third day of November, Two thousand and four.

To

1. The Asst.Commissioner of Income Tax, Circle 5 (1),

Ayakar Bhavan, Basheerbagh, Hyderabad.

2. The Commissioner of Income Tax, AP-I,

Ayakar Bhavan, Basheerbagh, Hyderabad.

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THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE S.ANANDA REDDY

WRIT PETITION No.28498 OF 1997

Dt: -10-2004.

(Msr)